

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**ERNEST GUTIERREZ,**

**Petitioner,**

**v.**

**No. 13-cv-1061 LH/SMV**

**FNU JOHNSON, et al.,**

**Respondents.**

**ORDER**

The Court having entertained this habeas corpus proceeding in forma pauperis pursuant to 28 U.S.C. § 2254 and 28 U.S.C. § 1915, and the Court having determined that the application is not subject to summary dismissal;

**IT IS ORDERED, ADJUDGED, AND DECREED** that the Clerk is directed to substitute German Franco, Warden as the sole named Respondent and to forward copies of this Order and the application to Respondent and the New Mexico Attorney General;

**IT IS FURTHER ORDERED** that Respondent answer said application within thirty (30) days from the date of service of this Order. Respondent's answer shall advise, but is not limited to, whether the Applicant has exhausted his state court remedies as to the issues raised in the federal application. In each case, Respondent shall attach to its answer copies of any pleading pertinent to the issue of exhaustion which was filed by Applicant in the sentencing court, the state district court, the state court of appeals and the state supreme court, together with copies of all memoranda filed by both parties in support of or in response to those pleadings. Respondent shall also attach to the answer copies of all state court findings and conclusions, docketing statements and opinions issued

in Applicant's state court post-conviction or appellate proceedings. In the event Respondent denies exhaustion, Respondent shall identify the state procedures currently available to Applicant given the nature of Applicant's claims and their procedural history.

**IT IS SO ORDERED.**

A handwritten signature in black ink, appearing to read 'S. Vidmar', is written above a horizontal line.

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**STEPHAN M. VIDMAR**  
**United States Magistrate Judge**